



Fed. R. Civ. P. 59 (a)(2)

A motion for new trial should be granted when “the verdict is against the clear weight of the of the evidence or will result in a miscarriage of justice, even though there may be substantial evidence which would prevent the direction of a verdict.” *See Lipphardt v. Durango Steakhouse of Brandon, Inc.*, 267 F.3d 1183,1186 (11th Cir. 2001). (quoting *Hewitt v. B.F. Goodrich Co.*, 732 F.2d 1554, 1556 (11th Cir.1984)).

3. Undersigned feels that he has an ethical obligation and duty to correct the previously stated standard of review. Upon further research and review, undersigned asserts the standard of review should be as follows:

Federal Rule of Civil Procedure 59(a)(2) states as follows:

**Further Action After a Nonjury Trial.** After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

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A new trial should be granted when the verdict will result in a miscarriage of justice. *See, e.g. Hewitt v. B.F. Goodrich Co.*, 732 F.2d 1554, 1556 (11<sup>th</sup> Cir. 1984). In a nonjury case, a motion for new trial should be based upon a “manifest error of law or mistake of fact” and should only be granted for “substantial reasons.” *See Ball v. Interoceanica Corp.*, 71 F.3d 73, 76 (2d Cir. 1995), *cert denied*, 519 U.S. 863, 117 S.Ct. 169, 136 L.Ed.2d 111 (1996) (quoting 11 CHARLES A. WRIGHT, ARTHUR R. MILLER & FRANK W. ELLIOTT, FEDERAL PRACTICE & PROCEDURE § 2804 (2d ed. 1995)).

Respectfully submitted this the 25<sup>th</sup> day of July, 2012.

/s Dustin J. Fowler

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One of the Attorneys for Claimant

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 25<sup>th</sup>, 2012, I electronically filed the foregoing with Clerk of the Court using CM/ECF system which will send notification of such filing to the following:

Danial E. Bennett, Esq.  
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/s Dustin J. Fowler

Dustin J. Fowler